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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,368	11/25/2003	Donald E. Weder	8404.031	6027
30589	7590	03/08/2006	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			ROSSI, JESSICA	
			ART UNIT	PAPER NUMBER
			1733	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/721,368	Applicant(s) WEDER, DONALD E.	
	Examiner Jessica L. Rossi	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/25/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 6-7, 10-11, 14-15, 18 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Weder (US 5307606).

One reading the present disclosure in light of the present claims and the statement provided on p. 3 of the IDS would have appreciated that Applicant believes his contribution to the prior art is providing a method for wrapping a floral grouping with a sheet of material constructed of paper (or other materials) having an embossed pattern formed thereon.

However, the '606 reference to Weder teaches all the limitations set forth in claims 1-3, 6-7, 10-11, 14-15, 18 and 21. Most importantly, Weder teaches providing a decorative covering 10 for a flower pot 38 wherein the covering can be paper, polymeric film, metallized film, laminations thereof and combinations thereof (column 1, lines 59-60; column 2, lines 34-37) and wherein the covering has an embossed pattern **and/or** a printed pattern on at least a portion of its upper surface 12 **and/or** its lower surface 14 (column 3, lines 20-26); therefore, the reference teaches that the covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 6-7, 10-11, 14-15, 18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder '606 in view of Rusincovitch et al. (US 5487929).

If for some reason it is not taken that Weder '606 teaches that the covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface, such would have been obvious to one of ordinary skill in the art at the time of the invention because it is known in the decorative covering art to provide an embossed pattern on the upper/first surface of the covering and a printed pattern on the lower/second surface of the covering in order to provide a decorative pattern of high quality, as taught by Rusincovitch (column 5, lines 34-40).

5. Claims 4-5, 8-9, 12-13, 16-17, 19-20 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder '606, or alternatively Weder '606 and Rusincovitch, and further in view of Weder (EP 582853).

It would have been obvious to provide the covering of Weder '606 as a roll of material that is unrolled and then cut into sheets, or alternatively, as a pad of sheets from which individual sheets are disconnected because such is known in the flower pot decorative covering art, as taught by Weder '853 (column 16, lines 15-26).

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6. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weder '853 in view of Weder '606 and/or Rusincovitch.

Weder '853 teaches all the limitations set forth in the present claims; however, it is unclear as to whether the reference teaches that the flower pot covering 32 has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an embossed pattern on the first surface and a printed pattern on the second surface of the covering of Weder '853 because such is known in the decorative covering art, as taught by Weder '606 (see paragraph 2 above) and/or Rusincovitch (see paragraph 4 above), wherein a decorative pattern meets consumer demands and wherein such a decorative pattern is of high quality.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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8. Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 5,752,360 in view of Weder '606 and/or Rusincovitch.

The '360 Patent teaches all the limitations set forth in the present claims; however, it is unclear as to whether the Patent teaches that the flower pot covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an embossed pattern on the first surface and a printed pattern on the second surface of the covering because such is known in the decorative covering art, as taught by Weder '606 (see paragraph 2 above) and/or Rusincovitch (see paragraph 4 above), for providing a decorative pattern of high quality.

9. Claims 1-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-84 of U.S. Patent No. 6,564,507 in view of Weder '606 and/or Rusincovitch.

The '507 Patent teaches all the limitations set forth in the present claims; however, it is unclear as to whether the Patent teaches that the covering has an embossed pattern on at least a portion of its first surface and a printed pattern on at least a portion of its second surface. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an embossed pattern on the first surface and a printed pattern on the second surface of the covering because such is known in the decorative covering art, as taught by Weder '606 (see paragraph 2 above) and/or Rusincovitch (see paragraph 4 above), for providing a decorative pattern of high quality.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jessica L. Rossi** whose telephone number is **571-272-1223**. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard D. Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**JESSICA ROSSI
PRIMARY EXAMINER**

Jessica Rossi